

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 November 16, 2022

17 11:07 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

Page 2

1 HEARING re ***PURDUE OMNIBUS***
2
3 HEARING re Doc. #4996 Pro-Se Letter Filed By Carrie L.
4 McGaha Seeking to Participate in Funding Decisions
5
6 HEARING re Doc. #5002 Pro-Se Letter Filed By Carrie L.
7 McGaha Seeking to Participate in Funding Decisions.
8
9 HEARING re Doc. #5226 United States of America's Opposition
10 To The Motions Filed by Claimant Carrie McGaha
11
12 HEARING re Doc. #5227 Debtors' Objection To Motion To
13 Require That Agencies Receiving Funds Generated From This
14 Case Shall Not Be Required to Follow The Executive Order On
15 Advancing Racial Equity And Support For Underserved
16 Communities Through The' Federal Government (EO 13985)
17
18 HEARING re Doc. #5241 Pro-Se Reply Filed By Carrie McGaha
19
20 HEARING re Doc. #5185 Ninth Interim Fee Hearing
21
22 HEARING re Doc. #5136 (Dechert LLP) Application For Interim
23 Professional Compensation / Ninth Interim Fee Application Of
24 Dechert LLP, Special Counsel, Period: 5/1/2022 To
25 8/31/2022, Fee: \$896,323.05 Expenses: \$1,269.32

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1 HEARING re Doc. #5135 (Arnold & Porter) Application For
2 Interim Professional Compensation / Ninth Application For
3 Interim Professional Compensation For Arnold & Porter Kaye
4 Scholer LLP, Debtor's Attorney, Period: 5/1/2022 To
5 8/31/2022, Fee: \$224206.14, : Expenses: \$5910.80

6

7 HEARING re Doc. #5150 (King & Spalding LLP) Application For
8 Interim Professional Compensation / Ninth Application For
9 Interim Professional Compensation For King & Spalding LLP,
10 Special Counsel, Period: 4/1/2022 To 8/31/2022, Fee:\$
11 1,577,209.96, Expenses: \$11,242.48

12

13 HEARING re Doc. #5152 (Davis Polk) Application for Interim
14 Professional Compensation /Ninth Application For Interim
15 Professional Compensation For Davis Polk & Wardwell LLP,
16 Debtor's Attorney, Period: 5/1/2022 To 8/31/2022, Fee:
17 \$5,992,845.00, Expenses: \$100,555.44

18

19 HEARING re Doe. #5163 (Jones Day) Application For Interim
20 Professional Compensation /Ninth Application For Interim
21 Professional Compensation For Jones Day, Special Counsel,
22 Period: 5/1/2022 To 8/1/2022, Fee: \$1,150,485.39, Expenses:
23 \$339,454.17

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1 HEARING re Doc. #5109 (Ernst & Young) Application For
2 Interim Professional Compensation / Eighth Interim Fee
3 Application Of Ernst & Young LLP, Auditors, Period: 5/1/2022
4 to 8/31/2022, Fee: \$67,000.00, Expenses: \$0.00

5

6 HEARING re Doe. #5155 (Alix Partners) Application For
7 Interim Professional Compensation / Ninth Interim Fee
8 Application Of Alixpartners, LLP, Financial Advisor, Period:
9 5/1/2022 to 8/31/2022, Fee: \$1,583,239.00, Expenses:
10 \$315,111.46.

11

12 HEARING re Doc. #5181 (Skadden) Ninth Application For
13 Interim Professional Compensation / Ninth Interim Fee
14 Application Of Skadden, Arps, Slate, Meagher & Flom LLP
15 Debtor's Attorney-Special Counsel, Period: 5/1/2022 To
16 8/31/2022, Fee: \$3,642,964.58, Expenses: \$260,967.74

17

18 HEARING re Doc. #5122 (PIT Partners LP) Application For
19 Interim Professional Compensation / Ninth Interim Fee
20 Application of PIT Partners LP as Investment Banker to the
21 Debtors, Period: 5/1/2022 To 8/31/2022, Fee: \$900,000,
22 Expenses: \$0.00

23

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1 HEARING re Doc. #5130 (Grant Thornton) Application For
2 Interim Professional Compensation / Fourth Interim Fee
3 Application Of Grant Thornton LLP, Consultant, Period:
4 5/1/2022 To 8/31/2022, Fee: \$41,101.50, Expenses: \$19,200.20

5

6 HEARING re Doe. #5151 (Latham & Watkins) Application For
7 Interim Professional Compensation / Second Interim
8 Application For Latham & Watkins LLP, Special Counsel To The
9 Debtors Period: 5/1/2022 To 8/31/2022, Fee: \$69,248.70,
10 Expenses: \$689.12

11

12 HEARING re Doc. #5156 (Reed Smith) Application For Interim
13 Professional Compensation / First Application For Interim
14 Professional Compensation For Reed Smith LLP, Special
15 Counsel, Period: 3/1/2022 To 8/31/2022, Fee: \$1,662,061.00,
16 Expenses: \$8,228.06

17

18 HEARING re Doc. #5177 (Jefferies LLC) Application For
19 Interim Professional Compensation /Ninth Interim Application
20 Of Jefferies LLC, Other Professional, Period: 5/1/2022 To
21 8/31/2022, Fee: \$900,000.00, Expenses: \$9,669.25

22

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1 HEARING re Doc. #5175 (Cole Schotz) Application For Interim
2 Professional Compensation /Eighth Interim Fee Application Of
3 Cole Schotz P.C. As Co-Counsel To The Official Committee Of
4 Unsecured Creditors, Period: 5/1/2022 To 8/31/2022, Fee:
5 \$487,002.00, Expenses: \$1,154.78

6

7 HEARING re Doc. #5178 (Province, LLC) Application For
8 Interim Professional Compensation/Ninth Interim Application
9 Of Province, LLC, Financial Advisor To The Official
10 Committee Of Unsecured Creditors Period; 5/1/2022 To
11 8/31/2022, Fee: \$1,810,785.51, Expenses: \$187.80

12

13 HEARING re Doc. #5174 (Akin) Application For Interim
14 Professional Compensation /Ninth Interim Fee Application Of
15 Akin Gump Strauss Hauer & Feld LLP As Counsel To The
16 Official Committee Of Unsecured Creditors Period: 5/1/2022
17 To 8/31/2022, Fee: \$2,148,032.50, Expenses: \$19,597.14

18

19 HEARING re Doc. #5159 (Otterbourg P.C.) Application For
20 Interim Professional Compensation / Application Of
21 Otterbourg P.C. As Co-Counsel To The Ad Hoc Committee Of
22 Governmental And Other Contingent Claimants Period: 5/1/2022
23 To 8/31/2022, Fee: \$49,652.00, Expenses: \$0.00

24

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1 HEARING re Doc. #5176 (Bedell) Application For Interim
2 Professional Compensation /Eighth Interim Fee Application Of
3 Bedell Cristin Jersey Partnership As Special Foreign
4 Counsel To The Official Committee Of Unsecured Creditors,
5 Period: 5/1/2022 To 8/31/2022, Fee:\$ 11,227.50, Expenses: \$0
6
7 HEARING re Doc. #5182 (Brown Rudnick) Application For
8 Interim Professional Compensation / Ninth Application for
9 Interim Professional Compensation For Brown Rudnick LLP)
10 Co-Counsel To The Ad Hoc Committee Of Governmental And Other
11 Contingent Liquidation Claimants, Period: 5/1/2022 To
12 8/31/2022, Fee: \$131,115.00, Expenses: \$3,619.44
13
14 HEARING re Doc. #5161 (FTI Consulting) Application For
15 Interim Professional Compensation / Ninth Interim Fee
16 Application Of FTI Consulting, Inc., Other Professional,
17 Period: 5/1/2022 To 8/31/2022, Fee: \$240,216.50, Expenses:
18 \$0.00
19
20 HEARING re Doc. #5179 (Kurtzman) Application For Interim
21 Professional Compensation /Ninth Interim Fee Application Of
22 Kurtzman Carson Consultants LLC As Information Agent
23 To The Official Committee Of Unsecured Creditors Period:
24 5/1/2022 To 8/31/2022, Fee:\$42,178.39, Expenses: \$4,751.69
25

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1 HEARING re Doc. #5158 (Gilbert LLP) Application For Interim
2 Professional Compensation / Ninth Interim Application For
3 Allowance Of Compensation For Gilbert LLP As Co-Counsel
4 To The Ad Hoc Committee Of Governmental And Other Contingent
5 Litigation Claimants, Period: 5/1/2022 To 8/31/2022, Fee:
6 \$2,001,309.50, Expenses: \$12,202.90

7

8 HEARING re Doc. #5180 (Kramer Levin) Application For Interim
9 Professional Compensation / Ninth Interim Application Of
10 Kramer Levin Naftalis & Frankel LLP, As Co-Counsel
11 To The Ad Hoc Committee Of Governmental And Other Contingent
12 Litigation Claimants Period: 5/1/2022 To 8/31/2022, Fee:
13 \$599,076.00, Expenses: \$263,157.10

14

15 HEARING re Doc. #5164 (Houlihan Lokey) Application For
16 Interim Professional Compensation / Eighth Interim Fee
17 Application Of Houlihan Lokey Capital, Inc., Investment
18 Banker and Co-Financial Advisor To The Ad Hoc Committee,
19 Period: 5/1/2022 To 8/31/2022, Fee: \$800,000.00, Expenses:
20 \$678.26

21

22 HEARING re Doc. #5184 (Caplin & Drysdale) Application For
23 Interim Professional Compensation / Fourth Interim
24 Application For Interim Professional Compensation For Caplin
25 & Drysdale, Chartered, Special Counsel To The Multi-State

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1 Governmental Entities Group, Period: 2/1/2022 To 9/30/2022,
2 Fee: \$870,355.00, Expenses: \$24,464.64

3

4 HEARING re Doc. #5173 (Kleinberg) Application For Interim
5 Professional Compensation / Second Application For Interim
6 Professional Compensation For Kleinberg, Kaplan, Wolff &
7 Cohen, P.C., Creditor's Attorney, Period: 5/1/2022 To
8 8/31/2022, Fee: \$350,152.00, Expenses: \$132.01

9

10 HEARING re Doc. #5127 (Bielli & Klauder) Application For
11 Interim Professional Compensation'/ Eighth Application For
12 Interim Professional Compensation For Bielli & Klauder, LLC,
13 Counsel To The Fee Examiner, Period: 5/1/2022 To 8/31/2022,
14 Fee: \$220,000.00, Expenses: \$0.00.

15

16 HEARING re Doc. #5151 Second Application for Interim
17 Professional Compensation / Second Interim Application of
18 Latham & Watkins LLP for Compensation for Services
19 Rendered and Reimbursement of Expenses Incurred as Special
20 Counsel to the Debtors and Debtors In Possession for the
21 Period From May 1, 2022 through August 31, 2022 for Gregory
22 G. Garre, Special Counsel, period: 5/1/2022 to 8/31/2022,
23 fee: \$69,248.70, expenses: \$689.12.

24

25 Transcribed by: Sonya Ledanski Hyde

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1 A P P E A R A N C E S :

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4 Attorneys for the Debtor

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8 BY: MARSHALL HUEBNER

9 ESTHER TOWNES

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12 Attorneys for the Official Committee of Unsecured

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17 BY: ARIK PREIS

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19 KRAMER LEVIN NAFTAILIS FRANKEL LLP

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24 BY: CAROLINE GANGE

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Page 11

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13 BY: MATTHEW J. GOLD

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15 BIELLI KLAUDER LLC

16 Court-Appointed Fee Examiner

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20 BY: DAVID KLAUDER

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1 DEPARTMENT OF JUSTICE
2 Attorneys for the United States
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4 New York, NY 10007
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6 BY: DANIELLE J. LEVINE
7 LAWRENCE FOGELMAN
8
9 CARRIE MCGAHA, Pro Se Claimant

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1 P R O C E E D I N G S

2 THE COURT: And the agenda for today's hearing has
3 been set forth at Docket Number 5233, which is entitled
4 Agenda for November 16th, 2022 Hearing.

5 And so we'll start by getting appearances. So
6 first from the Debtors.

7 MR. HUEBNER: Good morning, Your Honor. For the
8 record, Marshall Huebner with Davis Polk on behalf of the
9 Debtors. I'm joined by my colleague, Esther Townes, who
10 will be handling the second matter.

11 THE COURT: All right. Good morning. And on
12 behalf of the Official Committee of Unsecured Creditors?

13 MR. PREIS: Good morning, Your Honor. Arik Preis
14 from Akin Gump Strauss Hauer & Feld on behalf of the
15 Official Committee of Unsecured Creditors.

16 THE COURT: All right. And on behalf of the Ad
17 Hoc Committee of Government and Other Contingent Litigation
18 Claimants?

19 MS. GANGE: Good morning, Your Honor. Caroline
20 Gange from Kramer Levin on behalf of the Ad Hoc Committee.

21 THE COURT: All right. Good morning. On behalf
22 of the Multi-State Governmental Entities Group?

23 MR. DAVIS: Good morning, Your Honor. Kevin Davis
24 from Caplin & Drysdale on behalf of the Multi-State
25 Governmental Entities Group.

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1 THE COURT: All right, good morning. On behalf of
2 the nine professionals?

3 MR. GOLD: Good morning, Your Honor. Matthew
4 Gold, Kleinberg, Kalpan, Wolff & Cohen, on behalf of the
5 State of Washington and also coordinating with other states
6 in the nine.

7 THE COURT: All right. Thank you. On behalf of
8 the fee examiner?

9 MR. KLAUDER: Good morning, Your Honor. Can you
10 hear me okay?

11 THE COURT: I can hear you just fine.

12 MR. KLAUDER: David Klauder. I am the -- excuse
13 me, my voice is a little raspy this morning. David Klauder,
14 the court-appointed fee examiner. My counsel as well from
15 our law firm, Tom (indiscernible) is on as well. Thank you.

16 THE COURT: All right. Good morning. Thank you
17 very much.

18 And at this point, I realize there are a lot of
19 folks who are listening in who may not anticipate speaking
20 at today's hearing. And so obviously if that changes and
21 people do need to speak, they can make their appearance at
22 that time. But is there anyone else who wishes to make an
23 appearance at this time?

24 MS. LEVINE: Good morning, Your Honor. Danielle
25 Levine from the United States Attorney's Office.

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1 (indiscernible) New York on behalf of the United States.

2 THE COURT: All right. Good morning. Any other
3 appearances?

4 MR. FOGELMAN: Good morning, Your Honor. Larry
5 Fogelman, also on behalf of the United States.

6 THE COURT: All right. Good morning. Other
7 appearances?

8 MS. MCGAHA: Your Honor, this is Carrie McGaha,
9 pro se claimant. And I'm just appearing for the motion that
10 I made. Thank you.

11 THE COURT: All right. Thank you. Good to have
12 you here this morning. Any other appearances? All right.

13 So with that, I will turn it over to Debtor's
14 counsel in the first instance to start us off perhaps with a
15 status. I did receive also the twelfth monitor report I
16 mentioned just in the context of status and reviewed that.
17 That was at Docket 5235. And I know the agenda sets forth
18 uncontested matters which are fee applications and then Ms.
19 McGaha's contested matter.

20 But with that, Mr. Huebner, take it away, please.

21 MR. HUEBNER: Sure, Your Honor. So the way we
22 have normally done these is that I give a general report of
23 where I understand that the examiner is, since we have
24 (indiscernible) the examiner for several years. And rather
25 than having each professional sort of explain the exact

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1 resolution and that our -- the fee examiner obviously is
2 here to answer any questions and elaborate further,
3 obviously everyone is here waiting to address any questions
4 or comments that the Court we have. And then we intended to
5 send in I think on each of the quarterly occasions an
6 omnibus order that lists the actual final amounts after the
7 additional reductions, in many cases agreed to with the fee
8 examiner. The way it's (indiscernible) just for Your
9 Honor's benefit, since this is the first quarterly hearing
10 on the fee app since Your Honor took over the case, is that
11 the fee examiner actually sends out quite detailed -- at
12 least in our case they are detailed -- questions, concerns,
13 requests for reductions. We go through them all, we
14 (indiscernible) records, in some cases we provide additional
15 backup and explain how things were incurred on the right.
16 And then in most cases (indiscernible) we have reached a
17 resolution with the fee examiner, me and all the other
18 professionals. And those are reflected in the order
19 resulting in further savings to the estate, obviously
20 between the many parties for whom the Debtors are paying in
21 addition to themselves, there are a non-trivial number of
22 professionals. The way it's worked so far I think has been
23 efficient, obviously, it goes without saying. If Your Honor
24 would like to do it in some other way -- you know, we all
25 sort of work for you, so whatever you would like, we will of

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1 course accommodate. But it's been a pretty efficient and
2 streamlined way to handle it so far.

3 THE COURT: All right. No, all that sounds fine.
4 I appreciate the update. That was going to be the first
5 thing I asked you to address, which is to just give me an
6 overview. And I could piece together a lot of that from
7 looking at the papers that were filed, including the fee
8 examiner pleading and some other papers. But it's helpful
9 to have that on the record.

10 So let me -- there are a couple things that I
11 appreciate you addressed, and I'm going to lay them out sort
12 of all together because there might be some overlap. And
13 then obviously appreciate your insights and insights perhaps
14 of the fee examiner.

15 One is since this -- since I've inherited this
16 case and don't have the background with it that you all
17 have, obviously there's always a discussion when you have
18 excessive amount of professionals handling things that are
19 similar but distinct, and the question of overlap. And
20 maybe a short explanation of sort of what's gone on past
21 this prologue in terms of overlap and how that's been
22 handled in the case.

23 And I guess a second issue to address would be how
24 you handle -- I certainly know that -- and this happens in
25 any of these instances where there are fee examiners and

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1 there's sort of dialogue back and forth, which is obviously
2 great and efficient and helpful and it leads to the kind of
3 reductions you're talking about -- is how you want to handle
4 that, whether you essentially give me an idea, an overview
5 of the kinds of issues that the fee examiner -- that were
6 the subject of discussion that led to the reductions,
7 whether you do that as a global matter or whether you do
8 that application-by-application, I'm all for whatever you've
9 been doing in the past.

10 Third is -- and again, I apologize for giving it
11 all at once, but again, there's a bit of overlap in some of
12 these issues. So third would be the question of -- it was
13 mentioned of a holdback, obviously, and how the holdback has
14 been handled in this particular case. Again, you're getting
15 me educated, so I appreciate that.

16 And those I think are my three main questions.
17 And so I'm happy to let you address them however you think
18 is appropriate, starting with you, Mr. Huebner.

19 MR. HUEBNER: Sure. Let me take some of those,
20 and I think obviously Mr. Klauder will jump on sort of his
21 side of the house in particular, certainly on number two and
22 to some extent on number one. If I can, I'll go in reverse
23 order just because it's as easy as anything.

24 The way the holdback has worked in the case to
25 date is that there was a 20 percent holdback on fees held

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1 until these quarterly hearings for those periods, at which
2 point, assuming that the Court, as it has been to date, is
3 okay with the further reductions agreed to by the fee
4 examiner, the order is entered and the holdback for the
5 period that's been held is then paid. Obviously the way the
6 bankruptcy payment system works, everybody still has plenty
7 of skin in the game. This period, for example, ends on
8 August 31. And so there's already all of September, all of
9 October, all of November that have yet to be in some cases
10 paid at all. In some cases not even (indiscernible)
11 obviously in one case (indiscernible) 80 percent. And then,
12 you know, at some point three or four months from now, there
13 will be a rolling hearing for that formal period. And so
14 the Court has released on the interim compensation order
15 entered by the Court. There's a 20 percent holdback until
16 the quarterly hearings, at which point it is released when
17 the Court enters the order. So that's sort of number three,
18 if that's acceptable to the Court.

19 THE COURT: Yes, thank you.

20 MR. HUEBNER: With respect to sort of overlap and
21 (indiscernible) connected, obviously I will not speak to Mr.
22 (indiscernible) conversations of course with other firms,
23 which I have no knowledge of. But I will speak for a minute
24 about overlap and related issues.

25 You know, this is something that I think that's

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1 several levels of policing. You know, the company itself
2 obviously, frankly, is quite focused on and aware of and
3 works hard to minimize overlap. We actually have
4 coordination calls with the general counsel and deputy
5 general counsel and the senior leaders of each law firm
6 about every two weeks, including to make sure that there are
7 clear divisions of responsibility and that there are not
8 firms handling similar things.

9 You know, with respect to this application in
10 particular, for example, I can tell you for a fact I know
11 that in addition to the company being focused on it, and as
12 a fee examiner, as his firm had been in the past, is also
13 focused on it. And some of the questions were about, you
14 know, if you had Firm X, what was Firm Y doing and please
15 give me sort of detailed comfort that they were not doing
16 the same thing, and each one was sort of in their own lane.

17 One example (indiscernible) for this
18 (indiscernible) is that the most recent entrant I think to
19 the Debtor's legal (indiscernible) was Latham Watkins, which
20 was brought on for a very specific purpose, which is Supreme
21 Court and appellate expertise. You have a former solicitor
22 general who has argued 3,461 cases before the Supreme Court.
23 They wouldn't even have breakfast unless he tells them it's
24 okay. You know, was brought in. Although, frankly, at
25 Davis Polk we do an awful lot of appellate work

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1 (indiscernible) many billions of dollars at issue on the
2 right (indiscernible) really extraordinarily expert and
3 personally experienced in government would help both to
4 assist with the Second Circuit, but really with an eye
5 towards --

6 THE COURT: And some of the -- I went through the
7 applications for that purpose, and some of them are, you
8 know, pretty clear what lane folks are in. So, for example,
9 I think it was for the Committee. They had foreign counsel.
10 All right? You sort of have a pretty good idea of what that
11 is. And certainly I did see the appeal as a defined term in
12 the Latham Watkins application.

13 I did see -- and again, I apologize, I'm sure this
14 has all been addressed in the past no doubt. But just to
15 the education -- getting an education. There's obviously a
16 lot of intellectual property issues that have come up, and I
17 know there's different counsel involved in different things.
18 I don't know if there's anything in particular you can tell
19 me in terms of trying to understand the lanes that people
20 are operating in.

21 MR. HUEBNER: Sure. I can, Your Honor. I think
22 on that one, really Jones Day is overwhelmingly responsible
23 for the (indiscernible) intellectual property issues.
24 Frankly, I couldn't even name a single lawyer at Jones Day
25 working on this case because I don't think I've ever been on

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1 a single call with them, and I'm not sure people from Davis
2 Polk have been any more than zero, either. That's actually
3 quite separate. This is a large, complicated pharma company
4 that is defending its patents that are worth billions of
5 dollars in many (indiscernible). Frankly, David Polk
6 (indiscernible) with respect to IP really related
7 exclusively to negotiating IP-related issues with the
8 Sacklers as part of the brand settlement. But otherwise, we
9 have nothing in the world to do with IP, and I think that
10 the same is true on almost all the Debtor's other primary
11 law firms. You know, the one exception might be Skadden, in
12 addition to being the Debtor's primary DOJ counsel soup to
13 nuts, is working and has worked on some discrete
14 transactions from a sort of monetization disposition side.
15 Obviously, you know, I personally may have some mild overlap
16 with specialist counsel given that obviously in a form of
17 business, assets obviously IP-driven, as is much of their
18 value. But that's actually a very good example I think of
19 where there is to my knowledge very, very little overlap.
20 As I said, no disrespect to I'm sure amazing lawyers at
21 Jones Day, I've never been on a single call with them
22 despite being the Debtor's lead counsel for over four-and-a-
23 half years. So --
24 THE COURT: My guess is -- and that's all very
25 helpful, and I certainly -- the papers that came through

Page 23

1 that Skadden's primary role is DOJ counsel, but that it has
2 a couple of other specific things where it's jumped in. But
3 I guess I had asked about intellectual property because I
4 also saw that there's Arnold Porter here as the special
5 counsel and that was described as advising the Debtors on
6 intellectual property disputes and licensing. And so not
7 being an IP lawyer, you know, you realize you're operating a
8 bit blind on exactly how the division of labor might work,
9 which might be more obvious to somebody with an IP
10 background.

11 MR. HUEBNER: I'll ask one of those two firms to
12 jump in. I'm going to take a flyer here from one of the
13 weekly coordination calls. There may be a specific trial
14 that Arnold Porter is handling for the company against a
15 counterparty, but I could well be misspeaking. And so since
16 I think to my knowledge Jones Day is the primary counsel and
17 your question is -- but I also see Arnold and Porter. I
18 could ask someone from Arnold and Porter (indiscernible)
19 video and they'll explain the (indiscernible) overlap that
20 the Judge is asking about, because I think I would probably
21 not be helpful if I kept trying to do it from rather little
22 specific knowledge.

23 THE COURT: All right, fair enough.

24 MR. GREISS: Hi, this is Rory Greiss from Arnold
25 and Porter.

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1 THE COURT: Good morning.

2 MR. GREISSL: Sorry for my informal...

3 THE COURT: That's perfectly fine. Thank you for
4 being here.

5 MR. GREISSL: Sure. So mainly the work that we do,
6 which does involve some intellectual property aspects, is
7 transactional work for the client. So we are involved in
8 licensing arrangements, collaboration agreements, and
9 sometimes we will advise with respect to contractual
10 disputes that come up and advise the client on rights and
11 obligations under various agreements that they've entered
12 into in the past.

13 In addition to that work, we also do some
14 regulatory work for the client, and including on the
15 litigation side. So hopefully that gives you a good idea of
16 the work that we're doing and that it really does not
17 overlap with much of what the other firms are doing here.

18 THE COURT: All right. Thank you very much. And
19 I would be remiss if I didn't give the fee examiner an
20 opportunity to chime in, as obviously you are having exactly
21 these kinds of conversations on a much more granular, and
22 frankly useful level than the kind of very broad question
23 I'm asking.

24 MR. KLAUDER: That's correct. Excuse me. Yeah.
25 I mean, with respect to Jones Day and Arnold Porter in

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1 particular, the fee amounts show that Jones Day bills
2 significantly more, so they take on a higher level of the
3 IP.

4 As Mr. Greiss indicated, Arnold & Porter is a more
5 specific issue. But as it relates, Your Honor, to
6 duplication in general, this is the ninth go-around we've
7 now had with pretty much all these professionals. You can
8 well imagine when we first got involved in the first couple
9 of rounds, duplication was one of the top items of
10 discussion that went back and forth between my group and the
11 professionals. So we've always addressed this at the outset
12 between the firms, and really is an issue of sort of how the
13 folks communicate with each other, how they communicate with
14 themselves.

15 What happens -- if you don't mind, I can sort of
16 describe what happens in the interplay between what we do
17 and how the professionals respond.

18 THE COURT: That would be helpful. Again, I
19 realize what I'm asking for is a bit of explanation. While
20 it relates to what's currently on, I'm asking you to
21 essentially do me the favor of giving me a bit of the
22 background that I don't currently have, not having presided
23 over the matter.

24 MR. KLAUDER: Sure.

25 THE COURT: And my idea is that sometimes with

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1 that it's best to do it up front so that I get that
2 education as early as possible rather than have it sort of
3 dog me and then have me sort of continue to ask these kinds
4 of very basic questions in the long term. So yeah, I would
5 appreciate that. Kind of an explanation I think would be
6 very helpful.

7 MR. KLAUDER: Sure. So when the interim fee apps
8 are filed, we -- you know, we're reviewing -- obviously
9 there are monthly fee apps, but our contact with the
10 professionals occurs at the interim period. And so when
11 those are filed, we get our comments together and our
12 results together from our review and we put together what's
13 called an interim report, which is essentially a letter that
14 comes from me that sets forth all the issues that we've
15 uncovered with that particular interim fee app.

16 Oftentimes there are sort of detailed spreadsheets
17 that go with the specific topics that we address. You know,
18 just for Your Honor's edification, we use a software program
19 that is able to synthesize the time records. You can well
20 imagine the amount of time records that go into any interim
21 fee app in this case are just immense. So we need some
22 computer help to do the review. But there are humans that
23 are going through this that are doing the second level and
24 last level review, including myself, who signs off on all
25 interim reports that go out to the professionals.

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1 We then have a dialogue with each professional and
2 go through the issues that we phrased. And ultimately in
3 every case, it's resulted in a resolution. That's important
4 to me because, you know, frankly, I don't feel like -- and
5 I'm sure Your Honor doesn't feel like fee disputes are the
6 most efficient and economical disputes to be brought in
7 front of Your Honor. If there is to be one, we will bring
8 it in front of you. But we have very cooperative
9 relationships with everyone.

10 You know, when Judge Drain -- you know, we first
11 got in front of Judge Drain, he made it clear to us that he
12 did not want -- unless there were actual disputes that he
13 was going to have to decide, he did not want me and my group
14 to file any reports with the Court. So, you know, I've done
15 other fee examiner cases. I oftentimes do a report even if
16 it's on uncontested issues. But Judge Drain made it clear
17 he did not want that. And that's the way we've proceeded
18 throughout. If Your Honor feels differently, we can pivot
19 and create reports --

20 THE COURT: No, thank you. I appreciate you
21 flagging that issue. I certainly have been involved in
22 cases that had fee examiners. American Airlines obviously
23 was a large case, had a fee examiner. And each case has its
24 own dynamic. And I heard from Mr. Huebner that the client
25 is involved, and that was certainly a -- for example, in

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1 American Airlines a very significant part of how fees were
2 looked at, is they had a very engaged client. And that's
3 fine. I have no intent to change things, how things have
4 been done unless something is profoundly different than how
5 I normally do it. And again, there's a range of how things
6 are done in cases. And so there's no need to change how
7 you've been handling things.

8 Again, I just want to make sure that I get enough
9 information so I can -- it helps me with my review of these
10 things going forward and allows me to sort of exercise an
11 informed discretion as opposed to whistling in the dark, so
12 to speak. So, yeah, that's fine.

13 Let me ask you what you've done in the past when
14 you've -- essentially as you've been reaching agreements on
15 reductions how you essentially inform the Court of that. Is
16 it sort of on a top-level? Do you get into sort of
17 generally during this period for all applications we've
18 sought reductions and received reductions in these areas, or
19 do you do it application-by-application?

20 MR. KLAUDER: Yes. So the way we have done it
21 previously is essentially application or professional-by-
22 professional on a total level, not a specific issue level.

23 So I think after this hearing -- and I saw that
24 the Davis Polk group sent a form of the order. And attached
25 to that order contains a pretty detailed professional-by-

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1 professional list of what they've asked for in this interim
2 period, what they've agreed to reduce upon our
3 recommendation from a fee and expense standard. So that's
4 what you -- and that's what would be put before the Court.

5 You know, one other issue or one other factor that
6 we certainly take into account is some pretty significant
7 voluntary reductions that the professionals take, either
8 right off the top for whatever reason, or for specific
9 issues that are set out in the fee applications. And so
10 that's an important consideration that we always take into
11 account so that professionals are, without even any
12 prompting from our office, are taking some voluntary
13 reductions off the top. I thought that was important to let
14 Your Honor know about that. One, that that is happening,
15 and two, that we are taking that into consideration. It
16 doesn't prevent our review and it doesn't stop the issues
17 that we are raising, but it is a factor we consider.

18 THE COURT: All right. Thank you very much. I
19 appreciate your comments, the comments from counsel for
20 Arnold & Porter, and of course Mr. Huebner's comments as
21 well to just allow me to level set on exactly how things
22 have been done in this case. Again, very similar to how
23 I've seen it done in other cases. But again, there's always
24 a few unique things that are done in each case. That's sort
25 of the way things work and should work.

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1 So with that, those are -- I appreciate, again,
2 that information. And with that, I'll turn it back to
3 counsel to tee up anything else on status. And if not, then
4 to go through the uncontested matters.

5 MR. HUEBNER: Sure. And, Your Honor, just to put
6 a tiny bit more meat, and then I think we can move on. To
7 give you a sense of things, Davis Polk, we take a pretty I
8 think sharp pen to all of our monthly bills before we send
9 them. Just so you know, we actually wrote off over \$296,000
10 before we even file the monthly bills, which in fact
11 materially exceeded the (indiscernible) changes because it's
12 just, you know, we think we (indiscernible) no one would
13 ever raise questions about a single time entry
14 (indiscernible) to make sure that's the case.

15 When you add up just in our case, which is
16 actually a little bit unusually high, but it's fine. Our
17 initial self-reductions, which were quite material, a
18 conversation we had with the clients about one matter where
19 we actually were comfortable, but we decided in the interest
20 of (indiscernible) just to write off another \$60,000. And
21 then with Mr. Klauder's firm, we actually write off almost
22 seven percent of our time for this fee period voluntarily.
23 So to give you a sense, at least in Davis Polk's case, we
24 cut pretty deep when we think it's justified, sometimes we
25 don't and the numbers look smaller than that. We look very

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1 hard at every bill and we (indiscernible) and then we're
2 happy to be very reasonable and appropriate with others.

3 So, Your Honor, with that, unless the Court has
4 further questions, at this point the form of the order does
5 I think clearly reflect in clear form what further
6 reductions that were negotiated. And I was told early this
7 morning by Mr. Klauder -- I think he may have already said
8 has reached with all of the professionals. With the
9 Debtors, with the UCC, and for the other creditor groups
10 that we are paying.

11 And so unless the Court has further questions, I
12 think that order is now ready for entry, which would
13 thereafter allow the Debtors to release the holdback for a
14 period that goes back between seven and three months.

15 THE COURT: All right. I guess I would just
16 appreciate if the fee examiner could put on the record the
17 reductions that have been agreed upon between the fee
18 examiner and the Applicants. Just big picture as you like
19 just so I have that on the record.

20 MR. KLAUDER: And, Your Honor, you're not asking
21 for each professional, right?

22 THE COURT: No, just the big picture.

23 MR. KLAUDER: Okay. Just sort of -- it looks like
24 with expenses, fees and expenses in this go-around,
25 \$190,000.

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1 THE COURT: All right. Thank you very much. All
2 right. So with that, let me ask if there's any party that
3 wishes to be heard on the interim fee applications that are
4 on for today. And these are set forth in the agenda that
5 was filed on the docket, and they include the Debtor's
6 professionals, which are listed as A through L. They
7 include obviously Davis Polk, but also the other counsel
8 we've been talking about. It includes, but not limited to
9 folks we've already been talking about, Arnold & Porter,
10 Skadden Arps, but also includes other firms. Dechert LLP,
11 King & Spalding, and Latham & Watkins, Reed Smith, and
12 includes things that aren't law firms, such as Alix Partners
13 LLP.

14 So let me ask if anybody withs to be heard in
15 connection with the applications for Debtor's professionals.

16 All right. Let the record reflect that there's no
17 response, and I will also make clear that the record reflect
18 I haven't seen any opposition that's been filed in
19 connection with any of these interim applications, and
20 that's why they're listed as uncontested.

21 And I'm going to ask the same question of anybody
22 that wishes to be heard in connection with the interim fee
23 applications of the Official Committee of Unsecured
24 Creditors that are listed as M through R on the agenda,
25 include Jeffries, Cole Schotz, Province Inc., Akin Gump,

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1 Kurtzman Carson, and (indiscernible).

2 All right. Once again, don't hear any party
3 withing to be heard, and I didn't see any opposition on the
4 record. And in the same vein, if anybody wishes to be heard
5 in connection with the interim fee applications of the Ad
6 Hoc Committee of Governmental and Other Contingent
7 Litigation Claimants, those are listed on the agenda as S
8 through X. They include Brown Rudnick, FTI Consulting,
9 Otterbourg PC, Gilbert LLP, Kramer Levin, and Houlihan
10 Lokey. Anybody wish to be heard?

11 All right. Once again, hearing no response, and
12 the Court notes that also it has receive no opposition.

13 And I will ask the same question for the
14 professionals' interim applications that are on for the
15 Multi-State Governmental Entities for the group of nine and
16 for the fee examiner itself. These are listed on the agenda
17 as letters Y, X, and AA. Does anybody wish to be heard?

18 All right. Once again, the Court hears no
19 response and again did not see any opposition that was
20 filed.

21 So given the record before me, I will grant the
22 requested interim fee applications as have been modified by
23 agreements reached between the Applicants and the fee
24 examiner. And I view them as entirely appropriate as a
25 matter of the facts of the case and applicable law. And I

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1 appreciate again the background on the process provided by
2 all those who chimed in this morning.

3 And so with that, I believe that resolve the
4 uncontested matters, that is the uncontested fee
5 applications that are listed on the agenda.

6 So with that, Mr. Huebner, I will turn it back to
7 you.

8 MR. HUEBNER: Thank you, Your Honor. That
9 concludes the first matter. I think there is an irony that
10 Mr. Klauder has to be AA so that he can review literally A
11 through Z. Another one of the many reasons we all just
12 really hope this case can conclude as swiftly as possible to
13 get money and value and assets out to the hundreds of
14 thousands of victims, governmental and private, who are just
15 waiting for it. But obviously until we hear from the Second
16 Circuit, none of that is possible.

17 Your Honor, the second matter is a contested
18 matter being handled by my colleague, Esther Townes. It is I
19 believe someone else's motion. And so (indiscernible) Ms.
20 McGaha would like to go first or if I should durn the podium
21 --

22 THE COURT: All right. Yes.

23 MR. HUEBNER: I will turn off my (indiscernible).

24 THE COURT: Thank you very much for setting the
25 stage for that. So I'll sort of help to identify what's on

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1 and how we should proceed.

2 So, Ms. McGaha filed letters in this case which
3 are construed as motions. And a motion is anything
4 requesting the Court to take action. And so on the agenda
5 it's identified as the Pro Se Funding Decision Motion, and
6 it references the letter that was filed by Ms. McGaha
7 seeking to participate in plan funding decisions. It
8 mentions the letter at Docket 4996, which is dated August
9 2nd of 2022. And the purpose -- the letter says the purpose
10 of this letter is to request relief from having a department
11 of recovery essentially require compliance with a certain
12 executive order of the government executive order on
13 advancing racial equality and support for underserved
14 communities through the federal government, Executive Order
15 13985.

16 As the agenda reflects, there were two responses
17 to Ms. McGaha's request, and those are filed at Docket 5226
18 and 5227. 5226 is a memorandum of law and opposition to the
19 motion that was filed by the United States Attorney's Office
20 on behalf of the federal government. And Docket Number 5227
21 was the Debtor's objection to the motion, filed by the law
22 firm of Davis Polk.

23 And then there are listed and the contested matter
24 on the agenda certain related documents such as the notice
25 of hearing and the letter requesting hearing date and things

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1 of that sort, which are listed as A, B, and C as related
2 documents.

3 And then I think last but not least, which I don't
4 think made it onto the docket, the agenda that I have in
5 front of me, because I think it was filed on November 14th,
6 was the response of Ms. McGaha as a pro se claimant. That,
7 again, is dated November 14th. It's a three-page letter
8 with attachments. And so it's a response to something that
9 the U.S. Attorney's office filed and addresses -- provides
10 her take on their arguments.

11 And then attached to that is docents that are from
12 the Substance Abuse and Mental Health Services
13 Administration Interim Strategic Plan of November of 2022.
14 And this is -- which is essentially that agency's discussion
15 about its mission and its guiding principles across its
16 efforts. And that goes on for some -- there is a nine-page
17 strategic plan that concludes on Page 9 and then there's a
18 couple of pages of footnote references. And so I've looked
19 at that as well.

20 So I think that fills out everything that I have
21 received in connection with this particular motion. And I
22 just want to make it clear what I've received and what I've
23 read so that nobody feels an obligation to repeat everything
24 that they have put in those papers.

25 And so I see a hand raised. So go ahead, Counsel.

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1 MR. HUEBNER: Just one small procedural point. I
2 see that there are still several dozen people on the phone
3 from various parties, frankly, many of whom are charging the
4 estate. Sometimes people don't feel comfortable dropping
5 off at the hearing without asking the Court's permission as
6 a courtesy. At this point, respectfully, I think there
7 should be a very small number of people actually listening
8 to this matter, at least those are that are billing the
9 estate. I would ask that --

10 THE COURT: Thank you for flagging that. Much
11 appreciated. I have four people on my screen. I think it's
12 the four people that are -- who are involved in this
13 particular motion. And so yes, anybody who is here for the
14 interim fee applications or anything else that has been
15 resolved or addressed are more than free to leave. And I
16 will say that in the future, nobody has to ask. I
17 appreciate, Mr. Huebner, you mentioning it, because it's
18 important. And I do appreciate the courtesy that people are
19 extending by not leaving without permission, but you can
20 consider such permission given today and in the future when
21 your matter has been resolved and you don't need to be on
22 going forward. If, heaven forbid, somebody did do that and
23 had to come back on, we would just take a short break and
24 call that person and ask them to jump back on. It's fine.
25 I would rather that than have a lot of people on billing the

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1 estate that don't need to be here. So thank you very much.

2 MR. HUEBNER: (indiscernible). So I will go back
3 on mute now. Thank you. I'm sorry.

4 THE COURT: All right. No, all good.

5 So I just wanted to make sure, having listed
6 everything that I have, that there's not anything that was
7 filed connection with this that anybody thinks that I
8 missed. And so let me ask that very, very specific
9 question; is there any pleading that somebody submitted that
10 I didn't identify that I should have? All right, thank you.
11 That tells me that I have what I'm supposed to have.

12 So, Ms. McGaha, I will hear from you first. It's
13 your motion. And that's the way the normal rules are. I
14 appreciate you being here this morning. I have read
15 everything that you have submitted, and that's why I wanted
16 to make sure to identify it for the record and walk through
17 it, just so you know. And I understand your objection to be
18 that you don't want this executive order to play a role in
19 how funding in this case, that it's any funds given to the
20 federal government are handled. And so I understand that to
21 be your primary focus.

22 And so with that, I will give you a brief
23 opportunity if you wanted to add anything or highlight
24 anything in particular. Again, you don't need to go through
25 everything that you've submitted, because I have made sure

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1 to read everything that I have. Ms. McGaha?

2 MS. MCGAHA: Thank you, Your Honor. Thank you,
3 Your Honor. I appreciate the time that this is taking, and
4 I don't want to take up any more time than necessary, and so
5 I won't go over everything that I've written. And I have
6 written submissions in the past when Judge Drain was doing
7 this. And so I have tried to -- there's lots of information
8 that I shared. But anyways, as far as this goes, I want to
9 apologize to you and anyone else in the legal profession if
10 this is not being done. I know it's not being done, you
11 know, the way that you would like or whatever, but I do have
12 issues from all of the drugs that I took, and so it is hard
13 for me to not ramble and to keep things organized. And I'm
14 just doing the best that I can, because I feel compelled to
15 stand for truth right now.

16 And this equity thing, it sounds really nice, but
17 they are -- I have been in darkness from these drugs. I
18 have been vulnerable. I know what it's like to be so lost
19 that you just want help from somebody. And if they've got
20 mental health workers that are going out there and
21 pretending like changing your sex or that is something that
22 people can do, there's going to be people that will jump at
23 that as some kind of answer to solve their problem. Because
24 it's not just the drugs, it's the issues underlying that
25 cause people to be so vulnerable to seeking those drugs to

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1 relieve their pain.

2 And I know through my own experience taking them,
3 you know, everyone has different views. And I do have a
4 history prior to taking those drugs of working in the
5 healthcare and pharmaceutical field. And so it gives me
6 kind of a bigger view of all of this. And I feel like
7 there's so much primary focus on the money and the money
8 that people are making. I know there's people in these
9 states out here that -- they're making their living in the
10 recovery field and they're all, you know, can't wait to get
11 this money, or whatever. But they're not thinking about the
12 impact that these policies that are in this executive order
13 is causing.

14 SAMHSA, who is going to be giving all of the
15 guidelines and everything, they're relying on these
16 professionals and the government to lay out things and the
17 government is doing, like I said, in this report or this
18 paper that I wrote. And I just feel like it's important as
19 a person who was damaged and affected by these drugs, and
20 it's hurt my family, that if the lord gives me something
21 that I need to make a stand for and get it on the record,
22 that this is wrong what is happening, I just have to do it.

23 And I just don't want to take up any more time,
24 but I just had to make my concerns known as someone who I
25 feel like has standing in this issue. I have receipts for

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1 all of the drugs I took, and I only am here because the
2 grace and mercy of the lord. So I just thank you for your
3 time, and I appreciate everyone.

4 THE COURT: You are quite welcome. And let me
5 just -- there are times when legal papers and the terms that
6 lawyers use will land with a thud to folks who are maybe not
7 familiar with some of the terminology and can come across in
8 a different way than it's intended, and standing is one of
9 those words. There's a legal concept of standing, and it's
10 from Supreme Court cases talking about a particular question
11 about who has what rights in what contexts. But what it's
12 not talking about is who is affected in a circumstance like
13 this, meaning -- the confirmation hearing I think was a
14 reflection of the people who were impacted by these drugs.
15 And I think the reason why that confirmation hearing was
16 extensive and why there have been opportunities for people
17 to be heard in this case is a reflection of all that.

18 So I don't want you to take the word standing in a
19 way that's offensive to your circumstance. Nobody is --
20 that's not the intent and certainly not what I take from it,
21 either. And so I think everybody has friends and family who
22 have had issues related to the use of these drugs and their
23 awful personal stories. So I am very sensitive to that, and
24 I appreciate how difficult it is for you to be here and
25 discuss those.

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1 And so with that, I'm going to ask -- I'll first
2 start with debtor's counsel. I have read your response at
3 Docket 5227. I don't know if there's anything specific you
4 wanted to put on the record today, or if you just wanted to
5 stand on your papers.

6 MS. TOWNES: Good morning, Your Honor. Esther
7 Townes on behalf of the Debtors. Can you hear me clearly?

8 THE COURT: I can hear you just fine.

9 MS. TOWNES: Great. Thank you. As you noted, the
10 debtors primarily will rest on our papers. I think I would
11 like to emphasize just that the motion can be denied for at
12 least the two reasons that are laid out in the papers that
13 do not require the Court to delve into the substance of Ms.
14 McGaha's underlying objections to the executive order. And
15 while we understand that Ms. McGaha has her concerns, as is
16 indicated in our papers, we do not intend to respond to the
17 substance of the issue that Ms. McGaha has raised. And our
18 determination not to respond shouldn't be seen as adopting
19 or agreeing with her views on what are essentially political
20 issues.

21 Ultimately resolving the motions comes down to
22 (indiscernible) for the bankruptcy court to do. And there
23 is not, for the reasons we laid out in our papers, namely
24 that from a jurisdictional perspective, the motion is not
25 properly before the Court. And two, that the issues that

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1 are raised are not bankruptcy issues that are addressed in
2 the plan. And so to the extent that relief is sought with
3 respect to policy and otherwise, relief would not be
4 appropriate in this forum.

5 So unless Your Honor has specific questions about
6 our papers, I think we will rest on that and request that
7 the Court deny the motion.

8 THE COURT: All right. And let me hear from the
9 United States Attorney's Office if there's anything that you
10 wanted to add beyond what is in your papers.

11 MS. LEVINE: Good -- it's almost afternoon. Good
12 morning, Your Honor. Danielle Levine from the United States
13 Attorney's Office on behalf of the United States. We will
14 also primarily rest on what's in our papers as well. I did
15 want to echo the Court though that our use of the word
16 standing was not -- did not have the intent that Ms. McGaha
17 mentioned. Of course we are extraordinarily sympathetic to
18 the issues she has faced, but her concerns as posited in her
19 motion really do involve a generalized grievance about
20 certain policies embodied by the executive order issued by
21 President Biden, and they are really a political issue as
22 opposed to one that should be addressed by the courts.

23 And unless the Court has any questions, we will
24 rest on our papers.

25 THE COURT: All right. I do not.

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1 So what I would like to do is to just take a ten-
2 minute break, and then I will come back and tell you my
3 views on the matter. So I will leave all the video and
4 audio on, except I'll mute my microphone. And I'll be back
5 in about ten minutes. And I appreciate your patience on
6 that. Just give me a brief few moments. Thank you very
7 much.

8 (Recess)

9 THE COURT: All right. Good afternoon once again.
10 I want to make sure we have everyone here. I see Ms.
11 Townes, Ms. Levine, and Ms. McGaha.

12 So I want to address the motion now. I think that
13 that's appropriate and probably in the best interest of
14 everyone who is here.

15 I'm going to have to deny the motion, Ms. McGaha.
16 The Court doesn't have jurisdiction to grant the relief that
17 you request. And that's because the plan, that is the
18 funding source behind all of this, is currently on appeal.
19 So said another way, the plan is the foundation of the
20 motion, and the plan is the thing that provides the money to
21 be given to various government entities for the kind of
22 treatment that we're talking about. And it's those funds
23 and the use of those funds that really is the subject of
24 your motion.

25 But that plan, which was confirmed here, has been

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1 the subject of appeal and is currently still the subject of
2 appeal. So it went first to the District Court, who issued
3 a ruling. And that ruling is now before the Second Circuit.
4 And with that on appeal, that decision about whether the
5 funds are going to be available under the plan for the uses
6 set forth in the plan is still to be decided. And so that's
7 something that is -- when that happens and an issue like
8 that is on appeal, it divests, meaning it takes the
9 jurisdiction of this Court away on that issue as to whether
10 those funds are going to be spent at all in the manner
11 provided for in the plan.

12 And so we don't know whether money is going to be
13 spent, and if so how and how much until the Second Circuit
14 issues its decision. And potentially we might not know if
15 the Second Circuit issues a decision, someone appeals it to
16 the Supreme Court, and the Supreme Court takes that case.
17 And so there's actually something called the divestiture
18 doctrine which in its simplest terms provides that the
19 filing of an appeal divests the lower court of its control
20 over an issue and matter that's on appeal. And courts have
21 held that that legal principle applies to appeals of
22 bankruptcy court orders (indiscernible) confirmation of
23 plan. And so there are cases that discuss that in detail,
24 including Sabine Oil and Gas Company, 548 B.R. 674, 679
25 (Bankr. S.D.N.Y. 2016) which cites other cases.

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1 And so in addition, the question about exactly
2 what the executive order does or doesn't do is problematic
3 in terms of the relief that you request. So the executive
4 order on its face applies to the federal government, that is
5 it specifically says that it talks about what the federal
6 government should do or not do to address inequities in
7 policies and programs, but it does not apply to state and
8 local governments. So it wouldn't apply to state and local
9 governments in how any of them decided to use funds as
10 contemplated by their programs that might be available under
11 the plan. And in fact, the executive order doesn't even
12 purport to dictate how funds that would be distributed
13 directly to the federal government on an (indiscernible)
14 claim would be used. So the plan doesn't do that. And so
15 we don't really know what the concrete consequences of the
16 plan are vis-á-vis that or whether any of those uses would
17 be at all implicated by the executive order.

18 And so there's also -- so there could potentially
19 be specific issues that the Court would be called upon to
20 address, but we don't know what those are. So we don't
21 actually have a proposed use that invokes the executive
22 order that is -- that would be different than a use without
23 -- absent the executive order.

24 So in addition, the executive order states that
25 it's not intended to and doesn't create any right or

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1 benefit, substantive or procedural, that's enforceable law
2 against any party, against the United States, its agencies
3 or departments. And there have been cases that -- where
4 there have been similar kinds of executive orders that have
5 found that similar executive orders don't allow for what's
6 called the private right of action, meaning that an
7 individual can sue to enforce the executive order.

8 And so there are cases that talk about that. For
9 example, Women's Equity Action League v. Cavazos, 906 F.2d
10 742, 750 (D.C. Cir. 1990). And there are a few other cases
11 that are identified in the Government's brief in Footnote 5
12 of Page 7.

13 And so -- and I guess last but not least is,
14 again, even with the concerns that you have, I'm unaware of
15 anything in the executive order that would actually bear
16 upon or directly impact what a healthcare professional's
17 treatment would be a patient suffering from opioid use
18 disorder would somehow dictate exactly how treatment should
19 be provided. And again, that somewhat gets into the
20 question of we don't have facts before us that tell us any
21 of that at the moment. So in light of that, I don't have
22 what's called sort of appropriate case in controversy.
23 And indeed, there is a good argument to be made about
24 whether such a case in controversy would be appropriate to
25 have here in the bankruptcy court or whether it would need

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1 to be in the district court as a court of more general
2 jurisdiction when challenging something like an executive
3 order.

4 So, again, I can't really sort of fully get my
5 hands around that particular issue because I don't have a
6 particular case in controversy that is of particular use
7 under this particular plan and how it might implicate
8 people's rights that I can sort of sink my teeth into and
9 figure out what that looks like vis-á-vis what a more
10 general challenge would look like.

11 And so in issuing my ruling, Ms. McGaha, I
12 certainly appreciate how painful it is for you, no doubt, to
13 raise these issues, having the personal experience that you
14 have. It's not easy talking about these issues. And I
15 appreciate your candor. Your papers were very well-drafted.
16 I knew exactly what you were arguing. You did a fine job.
17 But your motion doesn't raise the kind of issue that I can
18 grant the relief that you request. So again, I appreciate
19 you being here today. I have read some of your other
20 submissions in the past. Probably not all of them, because
21 I wasn't involved in the case during its duration. But
22 obviously this is a very painful case on a personal level
23 for a lot of folks, including yourself. And I appreciate
24 very much you being here today.

25 So in light of that, my ruling, however, I would

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1 ask that the Debtor's counsel and the U.S. Attorney's Office
2 coordinate on submitting a proposed order on the motion.

3 And with that, that's my ruling.

4 MS. MCGAHA: Thank you, Your Honor. I appreciate
5 it. And perhaps maybe there are some lawyers that can take
6 up these concerns on behalf of the victims. So I appreciate
7 your time. Thank you.

8 THE COURT: You are more than welcome. And again,
9 be well.

10 So with that, let me ask if there's anything else
11 on the agenda that needs to be addressed in this case here
12 this morning. I guess that's really a question to you, Ms.
13 Townes, on behalf of the Debtors.

14 MS. TOWNES: Nothing further from the Debtors.
15 Thank you.

16 THE COURT: All right. Anything else from any
17 other party here this morning? All right. With that, the
18 Court is adjourned. Likely to not see folks until after
19 Thanksgiving. So in the meantime, I wish everyone the best
20 for Thanksgiving. Be well and stay healthy and safe and see
21 you in the not too distant future. Thank you.

22 (Whereupon these proceedings were concluded at
23 12:16 PM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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6 *Sonya M. Ledanski Hyde*

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8 Sonya Ledanski Hyde

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25 Date: November 17, 2022

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